IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.425 OF 2005

1. Shri Gangaram M. Sawant,
   son of late Mahadev Sawant,
   aged about 45 years,
   agriculturist.

2. Miss Kavita Sawant,
   d/o Shri Gangaram Sawant,
   aged 21 years,
   Spinster, service.

3. Shri Mahesh Sawant,
   s/o Shri Gangaram Sawant,
   Aged 20 years,
   agriculturist.

4. Shri Manguesh Sawant,
   s/o Shri Gangaram Sawant,
   aged 19 years,
   agriculturist.

All r/o H.No.31, Malpona,
Sattari, Goa. .... Petitioners

- Versus -

1. Shri Barkelo M. Sawant,
   s/o late Shri Mahadev Sawant,
   aged about 48 years,
   agriculturist.

2. Shri Mahadev Sawant,
   s/o Shri Barkelo Sawant,
   aged 23 years, Mason.

3. Shri Suresh Sawant,
   s/o Shri Barkelo Sawant,
   aged 21 years, Driver.

All r/o H.No. not known,
Malpona, Sattari, Goa.

4. The Chief Secretary,
   Govt. of Goa,
   Secretariat, Porvorim,
   Bardez, Goa.

5. The Collector of North Goa,
   North Collectorate,
   Panaji-Goa.

6. The Collector of South Goa,

South Collectorate,
Margao-Goa. .... Respondents

Shri Arun Bras De Sa for the Petitioners.

Shri N.K. Sawaikar for the Respondent Nos.1 to 3.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: FEBRUARY 17, 2006

ORAL JUDGMENT:

1. Heard the learned Advocates for the parties. Rule. By consent, rule made returnable forthwith.

2. Only grievance which is sought to be made by the petitioners in relation to the impugned order is about the finding arrived at by the trial Court that the document which is stated to have been exhibited as Exhibit-42 has been declared as the secondary evidence without any material being placed on record to establish that the document at Exhibit-42 is the secondary evidence of the original document.

3. Bare perusal of the impugned order discloses that merely because in the cross-examination of the witness, he admitted that the authority has passed an order in the nature reflected from Exhibit-42, the Court below has proceeded to classify the said Exhibit as the secondary evidence. No other material has been referred to, to arrive at the finding that Exhibit-42 is a secondary evidence. Question of holding any document produced by the

party to be a secondary evidence can arise only when the party seeking to produce the same establishes the same to be secondary evidence of the original. Such a finding cannot be arrived at merely on the basis of a statement by the witness that an order in the nature of the document was passed by the authority. Secondary evidence has to correspond by the contents of the original piece of evidence and care should be taken by the Court to ascertain that sufficient material is produced by the party to substantiate his claim about the truthfulness of such secondary evidence before such evidence being admitted in evidence as the secondary evidence. Since no such efforts have been made and merely on assumption that Exhibit-42 should be the secondary evidence, the finding in that regard has been arrived at and, therefore, it cannot be sustained, as rightly submitted on behalf of the petitioners. The learned Advocate appearing for the respondents has also fairly submitted that the said issue will have to be kept open, to be agitated by the parties in the course of recording of the evidence.

4. In the result, therefore, the petition partly succeeds and the impugned order to the extent it is sought to be challenged as above, cannot be sustained. The Court below should proceed with the recording of the evidence ignoring its finding that Exhibit-42 is the secondary evidence, thereby allowing the parties to establish the said claim in accordance with the provisions of law. The rule is made

absolute in above terms with no order as to costs.

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